

REMARKS

Claims 1-9 and 11-19 are presently pending in the application. Claims 1 and 6 are in independent form.

Independent claims 1 and 6 are rejected under §103 over a combination of at least Rutschmann and Peube. The Examiner acknowledges that Rutschmann fails to disclose “substantially all of the exhaust gas flowing through the valve in each of the multiple positions for tuning the exhaust muffler, the valve increasing a backpressure with the exhaust passage by increasingly blocking the exhaust passage with the valve.” (see p. 2 of the 9/19/07 Office Action). The Examiner appears to rely on Peube to provide this missing limitation in both claims 1 and 6. It is not clear if the Examiner is attempting to change this position when on page 10 of the Office Action the Examiner states “a substantial portion of the exhaust will flow through the exhaust line #9.”

First, Applicant points out that the claims require “substantially all of said exhaust flow through said valve” and not simply “a substantial portion of the exhaust.” Second, Applicant notes that this claimed feature is not supported by Rutschmann. Rutschmann states that the valve 15 is throttled so that the exhaust is split evenly (column 4, lines 34-39):

The splitting of both partial flows depends upon the position of the shutoff element 15 (throttle valve). This throttle position of the shutoff element should be chosen by corresponding triggering so that an even splitting of the exhaust flow from the first group 3 of cylinders 2 to both exhaust lines 9, 12 or to both catalytic converters 10, 13 is produced.

Thus, half of the exhaust will never flow through the valve 15. This can hardly be considered “substantially all of the exhaust,” as required by Applicant’s claims.

There is no location in the Rutschmann exhaust where a valve can be located without destroying the benefits and goals of Rutschmann and have substantially all of the exhaust flow through the valve. The Examiner states “for arguments sake, placing a valve upstream of the bypass line #16 in exhaust line would satisfy this.” Such a valve placement would serve absolutely no purpose. Moreover, such a valve placement would destroy the goals and benefits of Rutschmann since it would not split the exhaust flow equally between the converters 11, 13.

Accordingly, Rutschmann cannot be modified to include this claimed feature. The rejections to all of the claims must be withdrawn.

It is believed that this application is in condition for allowance. If any fees or extensions of time are required, please charge to Deposit Account No. 50-1482.

Respectfully Submitted,

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